APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,384	07/18/2003	James Philip Ohr	5760-12300	4635

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EXAMINER
THAI, TUAN V

ART UNIT	PAPER NUMBER
2186	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/623,384	OHR, JAMES PHILIP
	Examiner	Art Unit	
	Tuan V. Thai	2186	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 April 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-20</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-20</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>18 July 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/20/2005</u>.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

Part III   DETAILED ACTION

Specification

1.   This office action is responsive to communication filed

04/20/2005.   Claims 1-20 are presented for examination.

2.   Applicant is reminded of the duty to fully disclose

information under 37 CFR 1.56.

Rejections - 35 USC . 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms

the basis for all obviousness rejections set forth in this Office

action:

> (a) A patent may not be obtained though the invention is not
> identically disclosed or described as set forth in section
> 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that .
> the subject matter as a whole would have been obvious at the
> time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which
> the invention was made.

4.   Claims 1-20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Timpanaro-Perrotta (USPN: 6,880,051);

hereinafter Tim in view of Coombs (2003/0177149).

As per claims 1, 8·and 9; Tim discloses the invention as

claimed including a method and system comprises a primary storage

10 (e.g. see figure 1); a backup storage 24 (e.g. see figure 1);

a restore application configured to restore a set of files from

the backup storage to the primary storage (e.g. see column 1,

lines 47-49; column 4, lines 29-31 and figure 5); wherein the

restored one or more blocks of data are accessible by the

application while the restore is in progress is equivalently

taught by Tim as the restored files are available for access by

the application while restoration is performed for higher

priority value and before files associated with a lower priority

value are restored (e.g. see column 1, lines 57 et seq.). Tim

discloses the invention substantially as claimed; Tim, however

does not particularly teach a file server configured to determine

that one or more blocks of data of a file in the set of files

needed by an application have not been restored, and direct the

restore application to restore the determined one or more blocks

of data in response to the determination that the one or more

blocks of data have not been restored. Coombs, however in his

teaching of system and method for data backup discloses the

missing elements that are known to be required in Tim's system in

order to arrive at the Applicant current invention wherein Coombs

teaches determining the un-restored data files and direct the

restore application to restore the determined un-restored data

file blocks; for example, Coombs discloses until all the data to

be restored is copied to the second storage device, *the portion*

of the data to be restored remaining to be copied is determined

wherein a parent backup to the current backup from the

dependency data structure is determined and the parent backup

redefines the current backup where the data stored to the

current backup comprises any of the portion of the data to be

restored remaining to be copied, the any of the portion of data

is copied to the second storage device from the current backup

(e.g. see para.[0014], lines 13 et seq.; page 5, para. [0057],

lines 6 et seq.). Accordingly it would have been obvious to one

having ordinary skill in the art at the time the current

invention was made to implement the teaching of Coombs where un-

restored data files are determined and proceeding with the

restored operation in response to the determination that the one

or more blocks of data have not been restored for that of Tim's

system. In doing so, it would allow for completion of data file

restoration which results to reducing of errors in data

operation, enhancing system reliability, therefore being

advantageous.

As per claims 2 and 10; the further limitation of generating

a map correlating the destination locations on the primary

storage to source locations on the backup storage is taught by

Tim and Coombs as a file allocation table (FAT) or directory

table which is known in the memory storage art for storing

mapping data correlating the originated/destination location of

data amongst the primary and secondary storage (e.g. see Tim's

column 3, lines 30 et seq.; Coombs's page 4, para [0037], lines

11 et seq.); noting that Coombs further discloses accessing a

map/directory table through the use of backup/restored index to
determine the restored status of data file (e.g. see Coombs's
page 4, paras. [0039] [0040]);

As per claims 3 and 11, the combination of Tim and Coombs
discloses the file server sending a message to the restore
application for initiate the restored process (e.g. see Tim's
figure 5, column 4, lines 34 et seq.; Coombs's page 5, para.
[0057], lines 5 et seq.);

As per claims 4-5 and 12-13, the further limitation of file
system and driver of the file server for determining that one or
more blocks of data of a file (or selected data file) have not
been restored and directed the restore operation is taught by
Tim and Coombs wherein Coombs clearly discloses the restore
procedure for restoring each file identified to be restored that
is present in the particular incremental backup once the
incremental backup to be restored is determined (e.g. see page
5, para [0057], lines 6 et seq.; also see para. [0014], lines 13
et seq.);

As per claims 6 and 14; Coombs clearly discloses after the
restored operation of the parent backup, the remaining data files
or items in the list of files and directory with respect to the
parent backup are updated (e.g. see page 5, para. [0057], lines
18 et seq.);

As per claim 7, Tim clearly discloses that the system is a
Storage Area Network (SAN) system (e.g. see column 2, lines 49-

51).

As per claim 15-20; the combination of Tim and Coombs discloses the invention as claimed, see arguments with respects to claims 1-6 and 9-14. Tim and Coombs however do not particularly disclose a computer-readable medium of instructions to be implemented on a client computer as being claimed in claims 15-20. However, one of ordinary skill in the art would have recognized that computer readable medium (i.e., floppy, cd-rom, etc.) carrying computer-executable instructions for implementing a method, because it would facilitate the transporting and installing of the method on other systems, is generally well-known in the art. For example, a copy of the Microsoft Windows operating system can be found on a cd-rom from which Windows can be installed onto other systems, which is a lot easier that running a long cable or hand typing the software onto another system. The examiner takes Official Notice of this teaching. Therefore, it would have been obvious to put Tim and Coombs program on a computer readable medium, because it would facilitate the transporting, installing and implementing of Tim's and Coombs's program on other systems; therefore being advantageous.
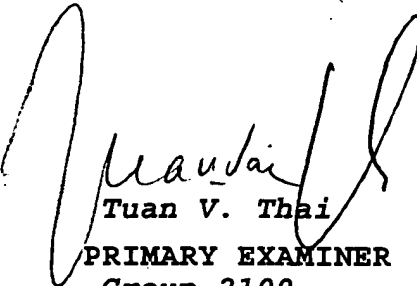
Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Thai whose telephone number is (571)-272-4187. The examiner can normally be reached on from 6:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mathew M. Kim can be reached on (571)-272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see *http://pair-direct.uspto.gov*. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TVT/August 05, 2005

Tuan V. Thai
PRIMARY EXAMINER
Group 2100